
(2016) 02 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition No. 3071 of 1992 and Civil Application No. 2449 of 2004
in Writ Petition No. 3071 of 1992

Gopaldas Kumandas Ved

APPELLANT

Vs

Ghevarchand G. Chordiya

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 BOM CK 0103

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : S.P. Shah, Advocate, for the Appellant; S.S. Bora, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.—1. This matter was admitted on 12.02.1993.

2. The petitioner is aggrieved by the judgment and order dated 17.02.1992 by which the District Court, Jalgaon has allowed Civil Appeal No. 313/1985 filed by the respondent herein. Consequentially, the judgment and decree dated 01.02.1985 passed by the learned Trial Court was set aside and Regular Civil Suit No. 544/1981 filed by the petitioner herein was dismissed.

3. Mr. Shah, learned Counsel appearing on behalf of the petitioner-plaintiff has strenuously criticized the impugned judgment.

4. His contention is that the petitioner is a landlord and the owner of the suit premises. The respondent herein is the tenant. The petitioner filed a suit for possession over the suit property which is a double storeyed bungalow. The respondent-tenant was occupying the entire first floor and half of the ground floor. Another tenant occupied half of the ground floor. The said bungalow was let out to the respondent in 1968-69. The respondent being a BHMS Doctor (Bachelor of Homeopathy Medicine and Surgery) was practicing in the said rented premises. The respondent was about 45 years old. It is stated that the

respondent today is about 80 years old.

5. The petitioner had claimed possession of the suit premises and for recovery of Rs. 327.50/- towards arrears of rent with mesne profits from the date of the filing of the suit till the delivery of the vacant possession. The suit premises is the municipal house situated on City Survey No. 1982/A/5-1/15, at Zilla Peth, Visanji Nagar, Jalgaon.

6. The doubled stored building consisted of six rooms and two varandah on the ground floor and equal number of rooms and 2 varandah on the first floor. There were two galleries on the first floor (southern portion of the house). On the ground floor on the northern side, two rooms and one varandah was in the possession of a tenant namely Gopalkrushna Kogappa Kadawkar. The rest of the premises on the ground floor and the entire first floor was in the possession of the respondent which is termed as the suit premises.

7. It is submitted that the suit premises were actually given on rent to the respondent for residential purpose @ Rs. 300/- per month since 1969. As the building was constructed for residential purposes, the building was let out to the two tenants named above for residential purposes only.

8. The petitioner had alleged that the respondent-defendant had changed the user of the suit premises by opening a poly-clinic. It was also alleged that the petitioner therefore derived the right to have the vacant possession of the suit premises under Section 13(1) (a) and 13(1)(k) of the Bombay Rent Act.

9. The petitioner further alleged that the respondent was already running two poly-clinics in the Jalgaon town situated at Rath Chowk and another at Shivaji Nagar. The suit premises were never let out to the respondent for business purposes like running a poly-clinic.

10. The petitioner further contended that the tenant had his own building at Plot No. 47, Jain Nagar, Zilla Peth, Jalgaon which is a large and lavish bungalow having all modern amenities and most convenient for the respondent to suitably occupy the said premises for residence purposes. It was further alleged that the respondent's family has been residing in the said owned bungalow alongwith the respondent for more than six months prior to filing of the suit. It was contended that the respondent was no longer in the need of the suit premises. It was further alleged that the respondent had sub-let the suit premises on 20.11.1973 to one Dr. Ulhas Kaduskar. The petitioner came to know of this fact in October 1981. It was further contended in the suit that the respondent has violated/contravened Section 15(1) of the Bombay Rent Act.

11. It was further contended that without his consent, the respondent had caused constructions and alterations of a permanent nature. The varandah on the ground floor towards the western side which was earlier open as per the architectural plan, was permanently closed by the respondent by fitting a wooden frame. A door and window with the said wooden frame was affixed and as such

the western side of the varandah was totally closed. By this change of permanent nature, the respondent deserved to be evicted.

12. It was further alleged that the respondent, in order to facilitate sub-letting of 3-4 rooms of the said premises, made a partition of permanent nature on the first floor in the hall admeasuring 10 ft. x 12 ft. and the permanent cement flooring was dug out and was replaced by polished stone flooring of a permanent nature. In the other rooms on the first floor, a permanent platform was also constructed on the western side hall. Shutters of the windows were cut into two pieces and an Almirah was permanently fixed in the said space. The common wall on the western side of the building was also raised in height by the respondent. The water pipes affixed by the petitioner were demolished and cement pipes were fitted in its place, causing damage to the plaster of the terrace. The water tank was also constructed on the roof of the wash room (latrine).

13. It was further alleged in the suit that by digging the compound of the eastern side, a new water tank was constructed. A new construction was also done on the western side by digging up the wall so as to cause the drainage of the water flowing from the wash room (latrine). A wash basin was fixed on the western compound wall. These alterations have made to cause a change of permanent nature in the structure of the suit premises. Therefore it was alleged that the respondent has contravened Section 13(1)(b) of the Bombay Rent Act.

14. The petitioner had also claimed the possession of the suit premises on the ground of bonafide requirement. His family was growing and the children were also taking education. It was a joint family house occupied by the petitioner alongwith several relatives and considering the size of the family, it was not convenient to continue to live in the said premises.

15. It was further alleged that considering the joint family, the relations inter-se between the petitioner's wife and the members of his brother's family were not cordial and normal. The petitioner desperately required the suit premises for residing in the same. The respondent had his own residential bungalow and was having two poly-clinics. Hence the respondent could not oppose the bonafide requirement of the petitioner.

16. The respondent had resisted the suit by filing his written statement. All the contentions were denied. Both the litigating sides led oral and documentary evidence. By a judgment and order dated 01.02.1985, the suit of the petitioner was decreed and the tenant-respondent herein was directed to handover the vacant possession of the suit premises to the plaintiff within 2 months from the date of the decree.

17. The respondent preferred Civil Appeal No. 313/1985 before the learned District Judge, Jalgaon. It was contended by the respondent that the suit premises were leased out for non-residential purposes. Material documentary evidence was ignored by the Trial Court. The respondent was staying in a rented

house at Plot No. 82, Navi Peth, Jalgaon owned by one Mr. Sharadchandra Kashinath Patwe.

18. It was further contended that minor repairs and change carried out in the suit premises was with the consent of the petitioner and as such, there was no convincing evidence before the Trial Court with regard to reasonable and bonafide requirement of the suit premises.

19. The District Court, Jalgaon by the impugned judgment and order dated 17.02.1992 allowed the appeal and quashed and set aside the judgment and decree dated 01.02.1985. It was concluded that the suit premises were occupied for running a nursing home/poly-clinic. Father of the petitioner rented out the suit premises for business purposes. The failure to examine the father of the petitioner before the Trial Court is fatal to the case. The respondent was conducting a poly-clinic in the suit premises from the very day he occupied the premises on rent. The District Court therefore concluded that there was no change of user of the suit premises.

20. Mr. Shah further submits that the District Court erroneously concluded that the alterations made in the suit premises were not of permanent nature and that they were all of temporary nature. The terms and conditions on the reverse side of the rent receipt indicate that the respondent could carry out alternations and repairs as he may deem fit and necessary for the proper use of the premises. The District Court therefore wrongly concluded that none of the alterations made in the suit premises can be said to be permanent structures or permanent alterations.

21. It was then wrongly concluded that considering the nuisance of the hutment dwellers residing on the southern side of the said premises, the construction of the compound wall by raising its height was made for preventing such hutment dwellers from climbing over the wall and prevent their unlawful entry and nuisance which can be said to be a necessary change that was warranted out of a necessity.

22. Mr. Shah submits that in so far as sub-letting the suit property was concerned, the District Court wrongly came to a conclusion that no such sub-letting was done by the respondent, that Dr. Kaduskar used to sit in the nursing home of the respondent only to assist him and that the said portion of the suit premises was not sub let to Dr. Kaduskar. Hence it was wrongly concluded that there was no sub-tenancy in the suit premises.

23. Mr. Shah then points out that the respondent had not disputed that he operated two other poly-clinics. The respondent had constructed a house at Plot No. 47, Zilla Peth, Jalgaon and he shifted into the said premises in 1976. The phone connection at the earlier residence in Navi Peth was also shifted to his newly constructed home.

24. Mr. Shah submits that the entire conclusions of the Trial Court which are

findings on facts, were over turned by the District Court only because a second view was possible.

25. Mr. Shah relied upon the following judgments:-

(a) Yogesh Dattaram Pathak Vs. Shrikishna Shriram Joshi, , 2003(Supp.) Bom.C.R. 587.

(b) Narayan Rajaram Alchetty Vs. Balamma Baburao Shirekam and Another, , 2005 (4) Mh.L.J. 538.

(c) Vithal N. Shetti and Another Vs. Prakash N. Rudrakar and others, , (2003) 1 SCC 18.

(d) Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others, , (1975) 2 SCC 668.

(e) Raghunath G. Panhale (Dead) By LRs. Vs. Chaganlal Sundarji & Co., , (1999) 8 SCC 1.

(f) Goverdhandas Mulchand Agrawal and Others Vs. Bherulal Uderam Bagade and Anohter, , 2005 (3) Mh.L.J. 196.

26. Mr. Shah therefore submits that the impugned judgment of the Appeal Court deserves to be quashed and set aside since on every issue, the Trial Court has taken a correct view and merely because a different view was possible, the Appeal Court could not have dismissed the suit. He therefore submits that the findings on facts arrived at by the Trial Court could not have been set aside by the Appeal Court until and unless the judgment of the Trial Court was perverse and erroneous.

27. Mr. Bora, learned Counsel for the respondent has strenuously defended the impugned judgment. His contention is that the father of the plaintiff had let out the suit premises for the purpose of using the same as a poly-clinic. When the said premises were taken on rent, the respondent was also living in rented premises.

28. The terms and conditions on the reverse side of the rent receipt clearly indicate that the respondent had the liberty to carryout alterations so as to improvise the property. Whatever constructions that were made, were of a temporary nature. They did not amount to permanent alternations or permanent structures. The Appeal Court has rightly considered the evidence on record and the nature of alterations carried out. It is noted that the height of the compound wall was raised only for improving the use of the premises and to ensure that the hutment dwellers did not climb over the short compound wall of the suit premises. Their unlawful entry and their nuisance was therefore countered by raising the height of the compound wall and their unlawful entry was thus prevented.

29. Mr. Bora further submits that the testimony of Dr. Ulhas Kaduskar and Dr.

Swaroopchand Lodha were not properly considered by the Trial Court. A misreading of their evidence lead the Trial Court to the conclusion that the respondent had sub-let the suit premises to Dr. Kaduskar and hence the respondent deserved to be evicted. He further submits that if it was to be believed that Dr. Lodha and Dr. Kaduskar were using the property for conducting their medical practice, it was not possible to do so by using the only entrance door to the said premises. A different entry could have then been facilitated so as to enable Dr. Lodha and Dr. Kaduskar to practice independently in the suit premises.

30. Mr. Bora then submitted that the respondent had a large practice at the relevant time. He practiced medicine by operating three clinics. After he constructed his house at Plot No. 47, Jain Nagar, Zilla Peth, Jalgaon, he shifted to the said premises in 1986. This would indicate that the respondent was living in rented premises earlier and started occupying his newly constructed home.

31. He further submits that the petitioner had not adduced sufficient oral and documentary evidence to support his case of bonafide requirement. There was another tenant occupying half portion of the ground floor and that itself would disprove the need of bonafide requirement put forth by the petitioner since even if the respondent was evicted, there was already another tenant occupying the portion of the suit premises.

32. Mr. Bora further submits that the aspect of the petitioner's marriage in 1973 and the suit having been filed in 1981 would also falsify the need of bonafide requirement. Mr. Bora therefore submits that the petition is devoid of merits and deserves to be dismissed.

33. Mr. Bora relies upon the following judgments of the learned Apex Court in support of his case:-

(a) Sidramappa Mutyappa Mengane (Dead) Through L.Rs. Vs. M/s. Mahadev Tammanna Bagdure, , 1994 (1) Bom.C.R. 568.

(b) Bhagwant Vishnu Purandare (Dead) Through L.Rs. Vs. Baldevdas Chhaganlal & Ors., , 1990 (1) Bom.C.R. 479.

(c) Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, , 2003 DGLS (Soft.) 37.

(d) Hotel Rosalia P. Ltd. Vs. Metro Hotels & Others., , 2001 (3) Bom.C.R. 400.

(e) Somnath Krishnaji Gangal Vs. Moreshwar Krishnaji Kale and Others, , 1995 (3) Bom.C.R. 327.

(f) The Pune Art Industries Vs. Narayan Kashinath Date, , 1994 (3) Bom.C.R. 68.

(g) Ramchandra Dattatraya Gandhi Vs. Pushpabai Manohar Sheth (Sou), , 1990 (1) Bom.C.R. 643.

(h) Ratanlal Ramgopal Agrawal & Ors. Vs. Kurban Hussain Gulamali Lahri &

Anr., , 1986 (2) Bom.C.R. 597.

(i) Alisaheb Abdul Latif Mulla Vs. Abdul Karim Abdul Rehman Mulla & Ors., 1981 Bom.C.R. 388.

(j) Balmukund Narsingdas Somani & Ors. Vs. Prakash Jagdish Ambali & Ors., , 1980 Bom.C.R. 633.

(k) Pitambardas Kalyanji Bakotiya Vs. Dattaji Krishnaji, , 1981 Mh.L.J. 290.

(l) Jagan Nath Vs. Chander Bhan, , 1988 DGLS(Soft.)402.

(m) Vasant Mahadev Pandit & Ors. Vs. Zaibunnisa Abdul Sattar Dhuru & Anr., , 2001(2) Bom.C.R. 616.

(n) Laxmibai Narayan Pathare Vs. Raghunath G. Tanawade, 1978 UCR (Bom.) 745.

(o) Pravinchandra Hemchand Vs. Choksey Ambalal Amichand and Anr., , 1998(5) Bom.C.R. 893.

(p) Mrs. Rena Drego Vs. Lalchand Soni Etc., , 1998(3) Bom.C.R. 320.

(q) Mohamad Yunus Vs. Mohd. Mustaqim, , 1983 DGLS(Soft.) 296.

(r) Tukaram Khusaba Chorge (Dead) Through L.Rs. Vs. Malam Janardhan Jagtap & Anr., , 1999(Supp) Bom.C.R. 113.

(s) Gangabisan Panalal Joshi & Ors. Vs. Dattatraya Chandrasa Bilade & Anr. , 1984(2) Bom.C.R.1.

(t) Smt. Mangala Mahadeo Damodhar Kale & Anr. Vs. Nilkanth Shamrao Nawalkar & Anr., , 1999(2) Bom.C.R. 454.

(u) Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte & Anr., , AIR 1975 SC 1297.

34. I have considered the submissions of the learned Counsel for the respective sides and have gone through the judgments cited, with their able assistance.

35. Mr. Shah has submitted that the petitioner had raised the following issues:-

(a) Change in user (which includes non-user).

(b) Acquiring alternate accommodation in the form of his own bungalow.

(c) Sub-letting.

(d) Making permanent structure.

(e) Bonafide requirement.

During the course of his submissions, the petitioner restricted his challenge only to the following issues:-

(a) Bonafide requirement.

(b) Erecting permanent structure.

(c) Sub-letting.

BONAFIDE REQUIREMENT

36. The petitioner had stepped into the witness box in support of his suit. His examination in chief was recorded below Exhibit 40. He had reiterated the contents of the suit in his examination in chief on the above issues. With regard to the aspect of the bonafide requirement, he had deposed by stating that he was living as a part of a large joint family in a House. There were six rooms in the said residence. The petitioner alongwith his brothers and parents were residing. There were in all 21 members in the family. The said premises were owned by the father of the petitioner. One room was used as a godown by his father. His three children were taking education. One room was used as kitchen.

37. He further deposed that there used to be frequent quarrels between the lady members of the family. He had suffered great hardship. Per contra, the defendant (respondent herein) would not suffer greater hardship since he had a large bungalow as his residence and was already operating two more poly-clinics as a doctor.

38. In his cross-examination, he has given the details of his family members and brothers. A partition took place in 1969 between the father and the brothers by which the petitioner got the suit building. His one brother Haridas was given Plot No. 28 and another brother Hansraj was given Plot No. 24. Another brother Narendra was given Plot No. 23 on which he constructed a building and his other brothers Ranjeet and Mahendra were not given any property. Haridas had also constructed a building on a plot given to him.

39. He further stated that the suit premises were the only share that he had acquired. His other brothers were living in fairly large houses with their families, independently.

40. He then stated that he did not have any document to show that the building was given to the respondent for the purposes of using it as his residence. He denied that the suit premises were rented out to the defendant only for the purpose of operating a nursing home and a poly-clinic. He then stated that he got married in 1974 and realised the need to occupying the suit premises. No attempt was seriously made to evict the respondent till filing of the suit.

41. During the course of the hearing of this matter, it is submitted that the respondent has three sons. Out of the three, only one is a practicing doctor who is settled in Surat, Gujarat. The respondent is about 80 years old today and has closed down two out of three poly-clinics that he was operating earlier.

42. It is trite law that merely because a second view is possible, the judgment under challenge ought not to be set aside. The learned Apex Court in the matter of Syed Yakub Vs. K.S. Radhakrishnan, , AIR 1964 SC 477 and in the matter of

Surya Dev Rai Vs. Ram Chander Rai, , AIR 2003 SC 3044 has concluded that unless a judgment under challenge does not appear to be perverse, erroneous and likely to cause grave injustice to a party, the Court should refrain from interfering with such an impugned order.

43. With regard to the first issue of bonafide requirement, I have considered the submissions of the learned Counsel for the respective sides. It is undisputed that the suit premises are owned by the petitioner. All his brothers have acquired and received their shares in the property under the partition that took place in the late 60s as is recorded above. The petitioner acquired the suit premises as his share in the property. There can be no debate that an owner of a property must get the opportunity of enjoying the property at least during his life time. Someday, the property must come back to the rightful owner.

44. The litigating sides have been battling it out for the past 35 years considering the institution of the Regular Civil Suit No. 544/1987 (in 1987).

45. The learned Single Judge of this Court in the matter of Sidramappa Mutyappa Mengane (supra) has considered the judgments delivered by the Hon'ble Supreme Court in the case of M.M. Quasim Vs. Manoharlal Sharma and Ors., , AIR 1981 SC 1113, P.B. Desai Vs. C.M. Patel, , AIR 1974 SC 1059 and Chandrashekhar S.R. Rao Vs. Ashalata S. Guram, , (1986) 4 SCC 41 while considering the aspect of reasonable and bonafide requirement. Tests of expediency, necessity and pressure on the landlord to have the premises vacated are the relevant considerations.

46. The Court therefore came to a conclusion that in a proceeding where a landlord seeks the exercise of his right of reentry by vacating the tenant on the ground that the premises are reasonably and bonafide required for his own use and where it is demonstrated that the landlord is in occupation of other premises in respect of which there is no threat or compulsion, this aspect can be canvassed as a ground to negative the enforcement of the right conferred under Section 13(1)(g) of the Rent Act. The Court concluded that in other words, quite apart from the aspect of balance of convenience, relative hardship, etc. which the landlord is able to satisfy, whether the tenant would be justified in resisting the landlord's claim on the solitary ground that pressure on the landlord is either non existence or is relatively minimum, needs consideration.

47. This Court further concluded that the Court cannot shut its eyes to subsequent developments. If a landlord acquires premises better and more suitable than the suit premises, the Court would have to take this into consideration. In the instant case, there is nothing on record to indicate that the petitioner has no other better residential accommodation and that his bonafide need and requirement to have the suit premises building for residential purposes is diluted. In fact, the record indicates that the petitioner needs the suit premises for his residential purposes even today. Per contra, the respondent has a lavish building for his residence and none of his sons have inherited his profession.

None of them have inherited his clientele to continue further practice and the respondent by growing age is closing down one poly-clinic after the other. Considering these subsequent events, the need of the petitioner under Section 13(1)(g) of the Bombay Rent Act, needs to be upheld.

48. This Court in the case of *Tukaram Khusaba Chorge* (supra) had concluded that there must be enough proof of bonafide need and the said need must be genuine in contradistinction with mere desire. Since the petitioner had adduced evidence before the Trial Court on all these counts and had established that he needed the suit premises to be used as his own residence, the Trial Court had upheld the said plea.

49. I do not find any sustainable reason for the Appeal Court to upset this finding without there being anything to the contrary. A finding on facts by the Trial Court on this count has been upset by the Appeal Court despite the fact that the petitioner had brought sufficient evidence on record to indicate that the residential premises owned by his father were small, the family had almost 20 members and due to the internal squabbles and differences between the family members, the petitioner was required to move out of the said premises. After the demise of his father, the said residential premises have been transferred to a brother as a part of his share in the property. The Appeal Court could not have turned a blind eye to these findings and merely because a different view was possible, it has upset the conclusions of the Trial Court.

50. I have gone through the entire evidence recorded before the Trial Court with the assistance of the learned Counsels. I find that the findings of the Trial Court and considering the fact that the respondent now is of a ripe age of 80 years coupled with the fact that only one of his sons is a doctor who is permanently settled in Surat, Gujarat, the aspect of bonafide requirement as was established before the Trial Court, is surely established considering the subsequent events. The respondent on account of growing age and considering that he has no other family member to inherit his practice, has closed down two of his poly-clinics at Rath Chowk and Shivaji Nagar area in Jalgaon District. There is no dispute that he has constructed a very big bungalow in an affluent locality which he utilises for his residential purposes. With the passage of time and considering the element of slowing down by age, I am of the view that the said property needs to go back to the petitioner and the respondent therefore needs to be evicted from the said property.

ERECTING PERMANENT STRUCTURE

51. In so far as the erection of permanent structure is concerned, the nature of structural changes brought about by the respondent have already been placed on record before the Trial Court. I have also considered the judgments cited by Mr. Bora with regard to the issue of construction and as to what type of construction would not amount to erection of a permanent structure. I have also considered the raising of the compound walls by the respondent in the light of the

judgments cited by Mr. Bora coupled with his contention that the compound walls were raised only to ensure that the hutment dwellers do not trespass on the property because of the short height of the compound walls.

52. Nevertheless, I am of the view that since the respondent has not introduced permanent structural changes in the columns, beams the walls and the slabs of the suit property, replacement of flooring with modern tiles and erecting of temporary bathroom, would not amount to introduction of permanent structural changes. The partitions erected are of Wood material and the same would therefore not amount to a permanent alteration. I am therefore not causing any interference in the judgment of the Appeal Court with regard to issue of erection of structures.

SUB-LETTING

53. With regard to the third issue of sub-letting, the petitioner has brought on record the evidence of Dr. Ulhas Kaduskar and Dr. Lodha who are said to be the persons introduced as sub-tenants by the respondent.

54. Dr. Lodha has stated in his examination in chief that he has been a medical practitioner from 04.07.1977. He was operating a consulting room in the nursing home of Dr. Chordiya (the respondent herein) at Visanji Nagar (suit property). He had possession of one room and for which he was paying rent of Rs. 400/- per month to Dr. Chordia. He has further stated that he had practiced in the said suit premises for a period of six months. The room in his possession was situated on the ground floor.

55. In his cross examination, he has stated that after his practicing hours are finished, he used to close the room and the same was in possession of the respondent. The respondent permitted him to use the said room and pay him rent on the mediation of one Mr. Surana. Dr. Lodha had agreed to vacate the premises after he got a proper accommodation. On 01.01.1978, he started his consultancy in another premises and handed over the possession to the respondent. Dr. Lodha further stated that a wash basin was constructed by the respondent so as to enable Dr. Lodha to use it. His wife is also a doctor (M.B.B.S.) and she would also work along with him in the consulting room.

56. Dr. Ulhas Kaduskar was also examined before the Trial Court. He stated that from November, 1974 till October, 1976, he was practicing in the suit premises. He used to pay Rs. 250/- per month to the respondent as rent for the consulting room. A wooden partition was erected by the respondent for creating one room for the use of Dr. Kaduskar and to enable him to practice from the said room. Dr. Kaduskar has stood by his statement even in the cross examination.

57. The respondent had deposed before the Trial Court stating therein that he had permitted Dr. Lodha to use the premises for his medical practice, but had not charged him any rent. He insisted that the ownership and the title of the suit property was with the petitioner. He is a B.A.M.S. graduate. Though he admitted

that he was operating two consulting rooms in Rath Chowk and Shivaji Nagar since 1985, yet he contended that this third premises (doubled stored suit premises) was acquired on rent only to operate a clinic and not to use it as a residence.

58. He further deposed that rent payment was shown as expenses of the nursing home. He had taken a phone connection in a special category which he had shifted to his residence (the new residence constructed by the respondent).

59. He further deposed that he had no enmity with Dr. Lodha who was using his room for consulting purposes on the west side of the ground floor. He had made a partition so as to convert that room into two rooms and Dr. Lodha was performing his consultation work independently. He however denied that Dr. Lodha paid him rent in cash. He also denied that Dr. Kaduskar was paying him any rent. He insisted that his relations with Dr. Lodha and Dr. Kaduskar (two witnesses of the petitioner) were cordial.

60. In the light of the above evidence, the Trial Court had come to a conclusion that the respondent-defendant had indulged in an act of sub-letting. The categorical statement made by the respondent that he had no enmity with Dr. Lodha and Dr. Kaduskar, Dr. Lodha was using a room for medical consultation independently, were also taken into account by the Trial Court. It was in these circumstances that the Trial Court has concluded that the respondent had indulged in an act of sub-letting the premises.

61. On the above count, I have considered the conclusions drawn by the Appeal Court. Paragraph no. 20 of the impugned judgment is with regard to the aspect of sub-letting. Merely because the evidence before the Trial Court could be read into differently, that the Appeal Court has arrived at a different conclusion and has concluded that the findings on facts arrived at by the Trial Court need to be upset. I am of the view that the Appeal Court has over turned the findings of the Trial Court on the aspect of sub-letting under Section 13 (1)(e) of the Bombay Rent Act only because a different view could possibly be taken.

62. In the light of the above, I find that the view taken by the Trial Court that the respondent had sub let the suit premises deserves to be sustained. On this count, the conclusion of the Appellate Court in paragraph no. 20 of the impugned judgment deserves to be set aside.

63. Mr. Bora has vehemently and strenuously contended that the jurisdiction of this Court to cause any interference in the impugned judgment is restricted. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Mrs. Rena Drego (supra), Mohamad Yunus (supra) and Tukaram Khusaba Chorge (supra) delivered by this Court, for contending that unless this Court finds perversity or error in the concurrent findings of the lower Courts, no interference is called for.

64. In Mrs. Rena Drego judgment (supra), the learned Single Judge of the High

Court had interfered with the decree of eviction. The learned Apex Court concluded that unless the impugned judgment is not found to be so perverse or unreasonable that no Court could have ever reached such conclusions, no interference is called for.

65. In the instant case, the Appeal Court has over turned the findings on facts arrived at by the Trial Court to the extent of bonafide requirement of the premises and creation of sub-tenant in the suit premises, merely because a different view was possible. The Appeal Court had lost sight of the fact that the petitioner had no other residence to occupy, his family was growing and the respondent was already operating two poly-clinics in the same Jalgaon city. Nevertheless, I find that the Appeal Court has interfered with the findings of the Trial Court only because a different view was possible. The same being perverse and erroneous, deserves to be interfered with.

66. In the light of the above, this writ petition is partly allowed to the extent of the reasonable and bonafide requirement of the petitioner and on the ground of the respondent having indulged in creating subtenant, under Section 13(1)(g) and 13(1) (c) of the Bombay Rent Act. Consequentially, the impugned judgment of the Appeal Court is quashed and set aside. The judgment and decree dated 01.02.1985 delivered by the learned Trial Court in R.C.S. No. 544/1987 is restored.

67. Rule is made absolute in the above terms.

68. There is no order as to costs.

69. Pending civil applications, if any, are disposed off.